

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4 No. 18 Civ. 2949 (ARR) (RER)

5
6 SUSANNA MIRKIN and BORIS MIRKIN,
7 Individually and on Behalf of All Others
8 Similarly Situated,

9
10 Plaintiffs,

11 -against-

12 XOOM ENERGY, LLC AND XOOM ENERGY
13 NEW YORK, LLC,
14 Defendants.

15
16 16 Court Street
17 Brooklyn, New York 11241

18
19 August 30, 2022

20 10:21 a.m.

21
22 DEPOSITION of SUSANNA MIRKIN (REDACTED),
23 a Plaintiff in the above-entitled action,
24 held at the above time and place, taken
25 before SAMUEL HITTIN, a Shorthand Reporter
 and Notary Public of the State of New
 York, pursuant to the Federal Rules of
 Civil Procedure, order and stipulations
 between Counsel.

1 S. MIRKIN
 2 don't remember anything specific about the
 3 decision to switch from XOOM to Viridian?
 4 A. Correct.
 5 Q. Okay. You later sued Viridian
 6 in a putative class action like this one,
 7 right?
 8 A. Correct.
 9 Q. And why?
 10 A. Because of their rates.
 11 Q. What about their rates?
 12 A. We spoke to the lawyers, and
 13 they were overcharging us as well, so
 14 that's when we decided to sue them.
 15 Q. Okay. Tell me in your words
 16 what that case was.
 17 A. It was about the rates and how
 18 they were overcharging us.
 19 Q. Okay. And do you know how that
 20 case was resolved?
 21 A. Yes. It was settled.
 22 Q. When?
 23 A. I believe two years ago.
 24 Q. And what payment did you receive
 25 in connection with that settlement?

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1 S. MIRKIN
 2 A. No.
 3 Q. -- or with -- about XOOM?
 4 A. No.
 5 Q. How did you find your lawyers?
 6 A. From Daniel, Daniel Hymowitz.
 7 Q. Is he someone you know?
 8 A. He's a family friend.
 9 Q. I see.
 10 And you spoke with him initially
 11 about Viridian? Well, strike that.
 12 I don't -- I don't mean to ask
 13 about discussions you had with your
 14 lawyers. I don't think that an initial
 15 consultation would be, but in any event,
 16 Mr. Daniel was the lawyer you first met
 17 with about a variable rate lawsuit?
 18 MR. WITTELS: Objection.
 19 Q. Is that right?
 20 A. With which company?
 21 Q. Any company.
 22 A. With Viridian and XOOM, correct.
 23 Q. Okay. Okay. We talked a little
 24 bit earlier about XOOM and other ESCOs
 25 seeking a profit in connection with their

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1 S. MIRKIN
 2 A. I received \$10,000 under my
 3 name, and under 10,000 under my husband's
 4 name.
 5 Q. Okay. Ms. Mirkin, do you mind
 6 if we take a break?
 7 A. Sure.
 8 THE VIDEOGRAPHER: We're going
 9 off the record at 11:39 a.m.
 10 [Whereupon, a short break was
 11 taken.]
 12 THE VIDEOGRAPHER: We're back on
 13 the record at 11:52 a.m.
 14 Q. Ms. Mirkin, can you tell me the
 15 names of the lawyers who are representing
 16 you in this case?
 17 A. Steven Cohen, Daniel Hymowitz,
 18 and Steven.
 19 Q. Mr. Wittels?
 20 A. Yes.
 21 Q. Anybody else?
 22 A. No.
 23 Q. Okay. Do you have any
 24 agreements with other lawyers about this
 25 lawsuit --

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1 S. MIRKIN
 2 business. Do you remember that?
 3 A. Correct.
 4 Q. Do you have any opinion about
 5 what's a reasonable profit margin for XOOM
 6 to charge?
 7 A. No.

8 [Whereupon, testimony continues
 9 in confidential transcript.]

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19 (Pages 76 - 79)

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 2 A. No.
 3 Q. Okay. Okay. Thank you very
 4 much.
 5 A. Okay.
 6 THE VIDEOGRAPHER: We are off
 7 the record at 12:08 p.m., and this
 8 concludes today's testimony given by
 9 Susanna Mirkin.
 10
 11 [TIME NOTED: 12:07 p.m.]
 12

13 SUSANNA MIRKIN
 14
 15 SUBSCRIBED AND SWORN TO
 16 BEFORE ME THIS _____
 17 DAY OF _____, 2022.

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1
 2 I N D E X
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 4 WITNESS EXAMINATION BY PAGE
 5 SUSANNA MIRKIN MATT MATTHEWS 7, 94
 6 STEVEN WITTELS 92
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 10 PLAINTIFF'S DESCRIPTION PAGE
 11 EXHIBIT 1 - CON EDISON RECORD 20
 12 EXHIBIT 2 - PAGE 19 OF WITNESS'S 20
 13 COMPLAINT
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 15 EXHIBIT 3 - FIRST PAGE OF SOME 20
 16 CONTRACT TERMS AND
 17 CONDITIONS
 18
 19 EXHIBIT 4 - BILLING INFORMATION 35
 20 FOR BORIS MIRKIN,
 21 21 PEGGY LANE, STATEN
 22 ISLAND, NEW YORK 10306
 23 EXHIBIT 5 - FULL COPY OF THOSE 71
 24 TERMS AND CONDITIONS
 25

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1
 2 CERTIFICATION
 3
 4 I, Samuel Hittin, a Notary Public for
 5 and within the State of New York, do
 6 hereby certify:
 7 That the witness whose testimony as
 8 herein set forth, was duly sworn by me;
 9 and that the within transcript is a true
 10 record of the testimony given by said
 11 witness.
 12 I further certify that I am not
 13 related to any of the parties to this
 14 action by blood or marriage, and that I am
 15 in no way interested in the outcome of
 16 this matter.
 17 IN WITNESS WHEREOF, I have hereunto
 18 set my hand this 6th day of September,
 19 2022.
 20
 21
 22
 23
 24 * * *
 25


 SAMUEL HITTIN

1
 2 ERRATA SHEET
 3 VERITEXT/NEW YORK REPORTING, LLC
 4
 5 CASE NAME: SUSANNA MIRKIN AND BORIS
 6 MIRKIN, ET AL VS. XOOM ENERGY,
 7 LLC, ET AL
 8 DATE OF DEPOSITION: AUGUST 30, 2022
 9 WITNESS' NAME: SUSANNA MIRKIN
 10
 11 PAGE/LINE(S)/ CHANGE REASON
 12 / / /
 13 / / /
 14 / / /
 15 / / /
 16 / / /
 17 / / /
 18 / / /
 19
 20 SUSANNA MIRKIN
 21 SUBSCRIBED AND SWORN TO
 22 BEFORE ME THIS DAY
 23 OF _____, 2022.
 24
 25 NOTARY PUBLIC
 26
 27 MY COMMISSION EXPIRES _____

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